PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Patrick BLANC

Appln. No.: 09/855,499

Confirmation No.: 9426

Filed: May 16, 2001

Docket No: Q64525

Group Art Unit: 2618

Examiner: Tu X. NGYUEN

For: METHOD OF ADJUSTING THE TRANSMISSION POWER OF BASE STATIONS TRANSMITTING IN MACRO-DIVERSITY

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated August 29, 2008. Entry of this Reply Brief is respectfully requested.

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STATUS OF CLAIMS

Claims 1-14 are all the claims pending in the application. Claims 1, 2, and 4-11 presently stand rejected under 35 U.S.C. § 103(a). Claims 3 and 12-14 contain allowable subject matter. Only the rejected claims 1, 2, and 4-11 are being appealed.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

There is only one issue on Appeal.

The only issue on Appeal is whether claims 1, 2, and 4-11 are improperly finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Appellant's Admitted Prior Art (hereinafter "APA").

ARGUMENT

Appellant respectfully requests the Board to reverse these grounds of rejection at least for the reasons set forth in the Appeal Brief filed on July 7, 2008 (hereinafter "Appeal Brief"). Furthermore, although Appellant believes that the Appeal Brief adequately addresses the Examiner's rejections, Appellant provides additional remarks that address the Examiner's position provided in the Examiner's Answer mailed August 29, 2008 (hereinafter "Examiner's Answer"), below.

Claims 1, 2, and 4-11 are improperly finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Appellant's Admitted Prior Art (hereinafter "APA"), as evidenced by WO 99/31819 to Butovitsch (hereinafter "WO 99/31819").

A. Improper Interpretation of Independent Claims 1, 6, and 9

The Examiner alleges that claims 1, 6, and 9 require *periodic* transmission of both the reference transmission power and adjustment period such that *periodic* adjustments are made (*see* page 5 of the Examiner's Answer). The Examiner, however, adds words that are not in the claims. That is, *periodic* transmission is not recited in the claims. In fact, claim 1, for example, recites:

> a reference transmission power for said adjustment is **signaled** to each of said base stations **together with an adjustment period**, and
>
> wherein each of said base stations **periodically** adjusts its transmission power to said reference transmission power, **at said adjustment period** (emphasis added).

In other words, claim 1 recites that the base station receives the reference transmission power together with the adjustment period and *periodically* adjusts (performs adjustments) to the reference transmission power at the adjustment period. That is, it is clear that there is a transmission of the reference transmission power and periodic adjustments to this reference transmission power. In short, the reference transmission power is not changed (*i.e.*, not signaled) at each adjustment period. In the exemplary embodiment, there is no need to signal updated values frequently even if the reference transmission power has changed. It is only necessary to perform regular adjustments even if they are performed on the most recently signaled value for the reference transmission power, which does not necessarily correspond to an up-to-date value of the transmission power. Accordingly, Appellant respectfully submits that the Examiner's interpretation of claims 1, 6, and 9 is improper and it is clear that periodic adjustments are being made based on the signaled reference transmission power.

Appellant further respectfully submits that the APA as evidenced by WO 99/31819 does not disclose or suggest the above-quoted unique features of claim 1.

B. The APA, as evidenced by WO 99/31819, does not disclose periodic adjustments to the signaled reference transmission power

The Examiner alleges that WO 99/31819 discloses the above-quoted unique features of claim 1. Specifically, the Examiner alleges that WO 99/31819 discloses multiple adjustments with respect to the received reference transmission power (*see* page 6 of the Examiner's Answer). Appellant respectfully disagrees.

Appellant respectfully submits that WO 99/31819 simply discloses that a radio network controller determines an initial transmit power setting for the target base station and new transmit power settings for the serving base stations synchronized to a particular time t0. The initial and new transmit powers and the synchronizing time are provided to the respective base stations. Each base station may adjust its respective transmit power so that it is at the desired level at the synchronization time (page 6, lines 24-27). WO 99/31819 further discloses that it applies at the initial power setting of a new base station becoming involved in a diversity handover as well as periodically during the diversity handover process to compensate for transmit power level drift (page 17, lines 15 to 17). That is, the power control procedure takes place in the beginning and during the diversity handover.

WO 99/31819 further discloses that upon receipt of every fast TPC command, the power is increased only at selected ones of those opportunities or periodically (page 16, lines 14 to 25). In other words, WO 99/31819 discloses that the adjustments should occur gradually. Specifically, the difference between the signaled new transmit power and the current transmit power is determined (α). Depending on this difference, the actual amount for correction is determined (Fig. 6, page 15, line 21 to page 17, line 10). Accordingly, only one set of control commands can be transmitted to all base stations and the actual amount for correction is determined by each base station individually (page 17, lines 12 to 21). In other words, WO 99/31819 discloses that after each signaled reference transmission power, the actual adjustment is determined.

Clearly, WO 99/31819, however, does not disclose or even remotely suggest signaling a reference transmission power and **periodically** correcting the transmission power to the signaled reference transmission power at the signaled adjustment period. In WO 99/31819, the frequency of the corrections by the base stations are controlled by the frequency of the signaling of the reference power. In other words, it is the reference power that is signaled, each time a correction is performed. In WO 99/31819, when the reference power is signaled, the base station corrects its transmission power based on the received reference power which is adjusted so that correction is gradual with respect to the current transmission power. In short, WO 99/31819 does not disclose or suggest periodic adjustments to the same received reference transmission power.

C. The synchronization time of the APA, as evidenced by WO 99/31819, is not and cannot be interpreted as the claimed adjustment period

The Examiner further maintains that synchronization time is both the claimed adjustment period and the claimed predetermined instant (*see* pages 6-7 of the Examiner's Answer). Appellant respectfully disagrees.

As acknowledged by the Examiner, WO 99/31819 discloses providing the synchronization time to the base stations. This synchronization time indicates an instant when to adjust the transmit time so that the adjustments are simultaneous at a number of base stations. In other words, as acknowledged by the Examiner, the synchronization time is the instant at which the transmit power is adjusted toward the new values (page 7, lines 3 to 6). In other words, WO 99/31819 discloses transmitting an instant at which the base stations adjust their power and not a period for periodic adjustments. In other words, the synchronization time is not an adjustment

period for performing **periodic** corrections but an instant at which a single adjustment is made. The synchronization instant of WO 99/31819 is not an adjustment period that is used to perform multiple adjustments. That is, the APA (including WO 99/31819) simply discloses providing a single instant for one adjustment and not a value for multiple (periodic) adjustments.

Appellant further respectfully maintains that this synchronization time of WO 99/31819 cannot be used to anticipate two different elements. For example, claims 2 and 3 describe predetermined instants at which adjustments are performed. By simple claim differentiation, a predetermined instant set forth in claims 2 and 3 and the adjustment period set forth in claim 1 have to be different elements and as such cannot be anticipated by the same synchronization time of WO 99/31819. In short, the synchronization time of WO 99/31819 cannot be both the predetermined instant and the adjustment period.

D. Concluding Remarks

Accordingly, Appellant respectfully requests the Board to reverse the rejection of independent claims 1, 6, and 9 and their dependent claims 2, 4, 5, 7, 8, 10, and 11.

CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal.

An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,

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Date: October 29, 2008